IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 17633 of 2007(Y)

PETITIONER:

T.G.SUNNY,
THONDUPARAMPIL, THAZHAKKARA P.O.,
MAVELIKKARA.

BY ADV. SRI.RINNY STEPHEN CHAMAPARAMPIL

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
REVENUE DEPARTMENT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR,
COLLECTORATE, ALAPPUZHA.

3. SPECIAL TAHSILDAR,
LAND ACQUISITION (GENERAL), ALAPPUZHA.

4. THE REVENUE INSPECTOR,
SPECIAL TAHSILDAR OFFICE,
LAND ACQUISITION (GENERAL), ALAPPUZHA.

BY GOVERNMENT PLEADER SHRI L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 A TRUE COPY OF NOTICE OF AWARD DATED 28.5.2007 ISSUED BY THE 3RD RESPONDENT

EXT.P2 TRUE COPY OF THE NOTICE OF EVICTION DATED 28.5.2007 ISSUED BY 3RD RESPONDENT

EXT.P3 TRUE COPY OF LAWYERS NOTICE DATED 1.6.2007

EXT.P4 TRUE COPY OF THE PROPERTY TAX RECEIPT NO.2799930 DATED 3.5.2007 OF VILLAGE OFFICE, THAZHAKKARA

EXT.P5 TRUE COPY OF GAZETTE NOTIFICATION NO.633 DATED 10.3.2004

//TRUE COPY//

K. PADMANABHAN NAIR ,J

W.P.(C) No.17633 of 2007 Y

Dated, this the 14th day of August, 2007

JUDGMENT

Heard. Admitted. Learned Government Pleader takes notice for respondents. Writ Petition itself is heard and disposed of after hearing both sides.

2. Petitioner is the owner in possession of 17 ares of property comprised in R.S.No.224/2/4 of Thazhakkara Village in Mavelikkara Taluk. Petitioner purchased the property from the previous owner on 2.5.1992. It is averred that on 31.5.2007 petitioner received Exts.P1 notice dated 28.5.2007 under Section 12(2) of Land Acquisition Act (for short 'the Act') and Ext.P2 notice informing him of taking possession of the property owned by him. It is averred that on the very next day itself petitioner issued a notice through his lawyer challenging Exts.P1 and P2 notices. It is specifically averred that no individual notices under Sections 4, 6 and 9 of the Act were given to the petitioner. It is also averred that public notice under Section 4(1) of the Act or declaration under Section 6(1) was not published. It is averred that according to the respondents Section 4(1) notification was published in Desabhimani daily and Section 6(1) declaration was published in Kerala Kaumudi daily. It is averred that those News papers having no circulation over the area where the petitioner is residing. It is averred that on enquiry it is understood that the proposed acquisition is stated to be for developing a municipal market. It is averred that

there is no public purpose exists and vast area of uncultivated paddy fields remaining vacant very near to the existing municipal market. It is further averred that those vast area of paddy fields are purchased by a business group for the establishment of an Engineering College and because of the undue influence exerted by the them that property was excluded and the petitioner's property which is situated in a Grama Panchayat is proposed to be acquired. So the Writ Petition to quash the entire land acquisition proceedings.

3. Respondents have filed a counter affidavit. It was contended that a requisition was received from the Municipal Council for acquisition of 1.2300 hectors of wet land comprised in R.S.No.224/2/4 of Thazhakkara Village in Mavelikkara Taluk. Accordingly a notification under Section 4(1) of the Act was published on 10.3.2004 and it was published in Desabhimani and Mathrubhumi. It was contended that notice was published in the locality also. It was contended that the petitioner did not file any objection but various other persons have filed objections and those objections were heard under Section 5A of the Act and proper decisions taken. It was averred that one John Philipose filed objection against the proposed acquisition, but he did not turn up during Section 5A enquiry stage. Accordingly Section 6(1) declaration was made on 24.1.2006 and subsequently notices under Sections 9(1) and 9(3) were served on the persons interested for award enquiry to be held on 14.5.2007. But none of the parties turned up for award enquiry and proved their title over the land proposed to be

acquired. It was averred that subsequently an award was passed on 15 .5.2007 ordering compensation due to the six holdings and it was ordered that the land value shall be deposited before the Sub Court, Mavelikkara under Section 31(2) of the Act. It was also averred that the third respondent had no information regarding the petitioner's ownership over any holdings under acquisition till the receipt of an application dated 14.5.2007 from one Thomas Panicker Chacko Panicker, one of the persons interested stating that he sold the land to the petitioner in the year 1992 itself and he may be exempted from further land acquisition proceedings. It was averred that Exts.P1 and P2 notices were given to the petitioner on receipt of such information. There is an unequivocal admission in the counter filed by the respondents that no notice under any of the provisions of the Land Acquisition Act was served personally on the petitioner.

4. The sum and substance of the contentions raised by the respondents is that they were totally unaware of the ownership of the petitioner over the land which was purchased by him in the year 1992 until they received a letter from the previous owner on 14.5.2007. The petitioner was regularly paying the land tax from the year 1992. It is an admitted case of the respondents that they were given notices to the previous owner of the property. Respondents have no case that Thomas Panicker Chacko Panicker voluntarily produced any documents to show his ownership. His name was collected by the respondents by verifying the revenue records. There is absolutely no justification in stating that the Land

Acquisition Authority who initiated land acquisition proceedings in the year 2004 was not able to collect the details of ownership of land proposed to be acquired though the transfer took place as early as in the year 1992. In view of the admission made by the respondents that the petitioner was not served with any notice at any stage, it is only just and proper to direct the third respondent to conduct an enquiry under Section 5A of the Act in respect of the petitioner alone after complying with the procedures under Section 4(1) of the Act. For that purpose all proceedings so far as the petitioner alone is concerned are to be quashed. I make it clear that this judgment will not affect the land acquisition proceedings covered by the 4(1) notification so far as it relates to any other persons.

In the result, Writ Petition is disposed of in the following manner. Declaration under Section 6(1) of the Act and the subsequent proceedings including the award passed as against the petitioner alone is quashed. Respondents are directed to conduct Section 5A enquiry so far as petitioner alone is concerned and pass appropriate orders with due notice to the petitioner. Section 5A enquiry shall be conducted within two months from the date of receipt of a copy of this judgment.

K. PADMANABHAN NAIR
JUDGE

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